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## USE OF THIS MANUAL

The Adult Sentencing Guidelines Manual provides comprehensive information for criminal justice practitioners, public officials and citizens on adult felony sentencing in the state of Washington. This manual offers specific guidance on how to determine the appropriate standard sentence range for an offense by identifying the seriousness level of the offense and by “scoring” the offender’s criminal history. This manual also lists and describes all current sentencing options, addresses reviews, modifications, discharges of sentences, as well as vacating conviction records. As an aid to judges, prosecutors, defense attorneys and other criminal justice professionals, this manual also includes forms for use in “scoring” an offender’s criminal history.

Adult felony sentencing in Washington is governed by the Sentencing Reform Act (SRA) of 1981, RCW Chapter 9.94A, as amended. This manual includes the text of the SRA, commentaries to amendments to the SRA and a digest of recent appellate and Supreme Court decisions interpreting and affecting the meaning of the SRA prepared by the Office of Attorney General of Washington. Persons interested in a comprehensive legal analysis of the SRA are advised to read *Sentencing in Washington*, by David Boerner (Butterworth Legal Publishers) and the 1996 supplement to *Washington Practice Volume 13A: Criminal Law*, by Seth Aaron Fine (West Publishing Co.).

This edition of the Manual has been updated to reflect amendments to the SRA enacted during the 2003 legislative session. Earlier editions of this manual should be retained for reference on offenses committed prior to the effective dates of the recently enacted legislation.

The Commission staff acknowledges those who assisted in the publication of this latest edition of the Manual. Contributors include the members of the Commission, chaired by David Boerner, who provided support and leadership; the staff of the Office of the Code Reviser, who assisted in identifying statutory changes; and the staff of the Office of the Attorney General who updated the applicable appellate case law. The Commission also appreciates the suggestions for improvements and additions to the Manual received throughout the year from attorneys, judges and criminal justice professionals. We always welcome suggestions for making the Manual easier to use.

Copies of the FY1996 through FY2002 Adult Sentencing Guidelines Manuals are available electronically on the Commission’s website at:

**<http://www.sgc.wa.gov>**

Comments or suggestions related to this Manual or to any other Commission publications should be directed to:

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# INTRODUCTION

Adult offenders who committed felonies on or after July 1, 1984 are subject to the provisions of the Sentencing Reform Act of 1981, as amended (SRA). The goal of Washington's sentencing system, which is based on a determinate sentencing model and eliminates parole and probation, is to ensure that offenders who commit similar crimes and have similar criminal histories receive equivalent sentences. The enabling legislation, RCW Section 9.94A *et seq.*, contains guidelines and procedures used by courts to impose sentences that apply equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or to a defendant's previous criminal record. The SRA guides judicial discretion by providing presumptive sentencing ranges for the courts to follow. The ranges are structured so that offenses involving greater harm to a victim and to society result in greater punishment. Sentences that depart from the standard presumptive ranges must be based upon substantial and compelling reasons and may be appealed by either the prosecutor or the defendant.

The Sentencing Guidelines Commission developed the initial guidelines and continues to advise the Legislature on necessary adjustments. The Commission is composed of twenty voting members; sixteen appointed by the Governor. Those sixteen appointed members include: four Superior Court judges; two defense attorneys; two elected county prosecutors; four citizens (one of whom is a victim of crime or a crime victims' advocate); one juvenile court administrator; one elected city official; one elected county official; and the chief of a local law enforcement agency. Four voting members serve in an *ex-officio* capacity to their state positions: the Secretary of the Department of Corrections; the Director of the Office of Financial Management; the Assistant Secretary of the Department of Social and Health Services' Juvenile Rehabilitation Administration; and the Chair of the Indeterminate Sentence Review Board. The Speaker of the House of Representatives and the President of the Senate each appoint two nonvoting members from their respective chamber, one from each of the two largest caucuses in each body.

In order to carry out its mandate, the Commission relies upon the cooperation and assistance of the superior court clerks of all 39 counties in the state. The clerks transmit copies of Judgment and Sentence forms issued in all adult felony convictions to the Sentencing Guidelines Commission. Commission staff extract data from the forms relating to the crime, the offender, the sentencing judge, the sentence, and alternatives to incarceration, where applicable, and enter the information into a computerized database. Using this database the Commission produces and distributes descriptive reports on actual sentences and analyzes the effects of changes in the law on prison and jail populations.

The Commission database is also the source of information used in preparation of annual statistical summaries of sentencing practices and other reports and studies related to felony sentencing in the state. Please direct questions about the guidelines, requests for notice of public meetings or copies of the minutes of Commission meetings or any other Commission publication, to the Commission office.

# SECTION I - SENTENCING GUIDELINES

This section explains the rules for applying the sentencing guidelines to **felony crimes committed after June 30, 1984**, including changes enacted by the 2003 regular session of the Legislature. The instructions cover the following:

- Offense Seriousness Level
- Offender Score
- Standard Sentence Range
- Sentencing Options
- Review of Sentences
- Penalty and Modification Hearing
- Discharge and Vacation of Conviction Record

## DETERMINING THE OFFENSE SERIOUSNESS LEVEL

The offense of *conviction* determines the offense seriousness level.

The seriousness level is measured on the vertical axis of the sentencing guidelines grid (See Table 1, page I-2). Felony non-drug offenses are divided into 16 seriousness levels ranging from low (Level I) to high (Level XVI). RCW 9.94A.510, 515 and 517 list the crimes included within each seriousness level (Table 2, page I-3).

The 1990 Legislature amended the sentencing grid for the first time, adding a new seriousness level and changing the penalties for Level XI. The 1997 Legislature changed the standard ranges at Level XIII. The 1999 Legislature subsequently restored the original standard ranges in Level XIII and modified the standard ranges in Level XIV. Crimes committed between July 27, 1997 and July 24, 1999 should be scored according to the 1997 sentencing grid, and crimes committed on or after July 25, 1999 should be scored according to the 1999 sentencing grid. This edition of the Manual includes the grids applicable to offenses committed after July 24, 1999 as well as the 2002 and 2003 changes to the list of offense ranked on the adult felony sentencing grid. Previous versions of the grid can be found in Appendix D.

Some felonies, those rarely charged or recently created by the Legislature, are not included in the Seriousness Level table and are referred to as “unranked.” Sentences for unranked felonies are entered without reference to the grid’s standard sentence ranges and do not require sentence calculations. The sentencing options for unranked felonies are described on page I-20.



**TABLE 1  
SENTENCING GRID  
FOR CRIMES COMMITTED AFTER JULY 24, 1999**

SERIOUSNESS LEVEL	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
<b>XVI</b>	<b>Life Sentence without Parole/Death Penalty</b>									
<b>XV</b>	23y 4m 240 – 320	24y 4m 250 – 333	25y 4m 261 – 347	26y 4m 271 – 361	27y 4m 281 – 374	28y 4m 291 – 388	30y 4m 312 – 416	32y 10m 338 – 450	36y 370 – 493	40y 411 – 548
<b>XIV</b>	14y 4m 123 – 220	15y 4m 134 – 234	16y 2m 144 – 244	17y 154 – 254	17y 11m 165 – 265	18y 9m 175 – 275	20y 5m 195 – 295	22y 2m 216 – 316	25y 7m 257 – 357	29y 298 – 397
<b>XIII</b>	12y 123 – 164	13y 134 – 178	14y 144 – 192	15y 154 – 205	16y 165 – 219	17y 175 – 233	19y 195 – 260	21y 216 – 288	25y 257 – 342	29y 298 – 397
<b>XII</b>	9y 93 – 123	9y 11m 102 – 136	10y 9m 111 – 147	11y 8m 120 – 160	12y 6m 129 – 171	13y 5m 138 – 184	15y 9m 162 – 216	17y 3m 178 – 236	20y 3m 209 – 277	23y 3m 240 – 318
<b>XI</b>	7y 6m 78 – 102	8y 4m 86 – 114	9y 2m 95 – 125	9y 11m 102 – 136	10y 9m 111 – 147	11y 7m 120 – 158	14y 2m 146 – 194	15y 5m 159 – 211	17y 11m 185 – 245	20y 5m 210 – 280
<b>X</b>	5y 51 – 68	5y 6m 57 – 75	6y 62 – 82	6y 6m 67 – 89	7y 72 – 96	7y 6m 77 – 102	9y 6m 98 – 130	10y 6m 108 – 144	12y 6m 129 – 171	14y 6m 149 – 198
<b>IX</b>	3y 31 – 41	3y 6m 36 – 48	4y 41 – 54	4y 6m 46 – 61	5y 51 – 68	5y 6m 57 – 75	7y 6m 77 – 102	8y 6m 87 – 116	10y 6m 108 – 144	12y 6m 129 – 171
<b>VIII</b>	2y 21 – 27	2y 6m 26 – 34	3y 31 – 41	3y 6m 36 – 48	4y 41 – 54	4y 6m 46 – 61	6y 6m 67 – 89	7y 6m 77 – 102	8y 6m 87 – 116	10y 6m 108 – 144
<b>VII</b>	18m 15 – 20	2y 21 – 27	2y 6m 26 – 34	3y 31 – 41	3y 6m 36 – 48	4y 41 – 54	5y 6m 57 – 75	6y 6m 67 – 89	7y 6m 77 – 102	8y 6m 87 – 116
<b>VI</b>	13m 12+ - 14	18m 15 – 20	2y 21 – 27	2y 6m 26 – 34	3y 31 – 41	3y 6m 36 – 48	4y 6m 46 – 61	5y 6m 57 – 75	6y 6m 67 – 89	7y 6m 77 – 102
<b>V</b>	9m 6 – 12	13m 12+ - 14	15m 13 – 17	18m 15 – 20	2y 2m 22 – 29	3y 2m 33 – 43	4y 41 – 54	5y 51 – 68	6y 62 – 82	7y 72 – 96
<b>IV</b>	6m 3 – 9	9m 6 – 12	13m 12+ - 14	15m 13 – 17	18m 15 – 20	2y 2m 22 – 29	3y 2m 33 – 43	4y 2m 43 – 57	5y 2m 53 – 70	6y 2m 63 – 84
<b>III</b>	2m 1 – 3	5m 3 – 8	8m 4 – 12	11m 9 – 12	14m 12+ - 16	20m 17 – 22	2y 2m 22 – 29	3y 2m 33 – 43	4y 2m 43 – 57	5y 51 – 68
<b>II</b>	0 - 90 Days	4m 2 – 6	6m 3 - 9	8m 4 – 12	13m 12+ - 14	16m 14 - 18	20m 17 - 22	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57
<b>I</b>	0 - 60 Days	0 – 90 Days	3m 2 - 5	4m 2 – 6	5m 3 - 8	8m 4 - 12	13m 12+ - 14	16m 14 - 18	20m 17 - 22	2y 2m 22 - 29

**TABLE 2**  
**CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL**

Level	Standard Range* (Months)	Offense
XVI	Life/Death	Aggravated Murder 1° (RCW 10.95.020)
XV	240 - 320	Homicide by Abuse (RCW 9A.32.055) Malicious Explosion 1° (RCW 70.74.280(1)) Murder 1° (RCW 9A.32.030)
XIV	123 - 220	Murder 2° (RCW 9A.32.050)
XIII	123 - 164	Malicious Explosion 2° (RCW 70.74.280(2)) Malicious Placement of an Explosive 1° (RCW 70.74.270(1))
XII	93 - 123	Assault 1° (RCW 9A.36.011) Assault of a Child 1° (RCW 9A.36.120) Malicious Placement of an Imitation Device 1° (RCW 70.74.272(1)(a)) Rape 1° (RCW 9A.44.040) Rape of a Child 1° (RCW 9A.44.073)
XI	78 - 102	Manslaughter 1° (RCW 9A.32.060) Rape 2° (RCW 9A.44.050) Rape of a Child 2° (RCW 9A.44.076)
X	51 - 68	Child Molestation 1° (RCW 9A.44.083) Indecent Liberties (with Forcible Compulsion) (RCW 9A.44.100(1)(a)) Kidnapping 1° (RCW 9A.40.020) Leading Organized Crime (RCW 9A.82.060(1)(a)) Malicious Explosion 3° (RCW 70.74.280(3)) Manufacture of Methamphetamine (RCW 69.50.401(a)(1)(ii)) Over 18 and Deliver Heroin, Methamphetamine, a Narcotic from Schedule I or II, or Flunitrazepam from Schedule IV to Someone Under 18 (RCW 69.50.406) Sexually Violent Predator Escape (RCW 9A.76.115)
IX	31 - 41	Assault of a Child 2° (RCW 9A.36.130) Controlled Substance Homicide (RCW 69.50.415) Explosive Devices Prohibited (RCW 70.74.180) Hit and Run—Death (RCW 46.52.020(4)(a)) Homicide by Watercraft by being under the Influence of Intoxicating Liquor or any Drug (RCW 79A.60.050) Inciting Criminal Profiteering (RCW 9A.82.060(1)(b)) Malicious Placement of an Explosive 2° (RCW 70.74.270(2)) Over 18 and Deliver Narcotic from Schedule III, IV, or V or a Nonnarcotic, except Flunitrazepam or Methamphetamine, from Schedule I-V to Someone Under 18 and 3 Years Junior (RCW 69.50.406)

**TABLE 2**  
**CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL**

Level	Standard Range* (Months)	Offense
		Robbery 1° (RCW 9A.56.200) Sexual Exploitation (RCW 9.68A.040) Vehicular Homicide, by Being Under the Influence of Intoxicating Liquor or any Drug (RCW 46.61.520)
VIII	21 - 27	Arson 1° (RCW 9A.48.020) Deliver, or Possess with Intent to Deliver Methamphetamine (RCW 69.50.401(a)(1)(ii)) Homicide by Watercraft by the Operation of any Vessel in a Reckless Manner (RCW 79A.60.050) Manslaughter 2° (RCW 9A.32.070) Manufacture, Deliver, or Possess with Intent to Deliver Amphetamine (RCW 69.50.401(a)(1)(ii)) Manufacture, Deliver, or Possess with Intent to Deliver Heroin or Cocaine (When the Offender has a Criminal History in This State or any Other State that Includes a Sex Offense or Serious Violent Offense or the Washington Equivalent) (RCW 69.50.401(a)(1)(i)) Possession of Ephedrine or any of its Salts or Isomers or Salts of Isomers, Pseudoephedrine or any of its Salts or Isomers or Salts of Isomers, Pressurized Ammonia Gas, or Pressurized Ammonia Gas Solution with intent to manufacture methamphetamine (RCW 69.50.440) Promoting Prostitution 1° (RCW 9A.88.070) Selling for Profit (Controlled or Counterfeit) Any Controlled Substance (RCW 69.50.410) Theft of Ammonia (RCW 69.55.010) Vehicular Homicide, by the Operation of Any Vehicle in a Reckless Manner (RCW 46.61.520)
VII	15 - 20	Burglary 1° (RCW 9A.52.020) Child Molestation 2° (RCW 9A.44.086) Civil Disorder Training (RCW 9A.48.120) Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct (RCW 9.68A.050) Drive-by Shooting (RCW 9A.36.045) Homicide by Watercraft by Disregard for the Safety of Others (RCW 79A.60.050) Indecent Liberties (without Forcible Compulsion) (RCW 9A.44.100(1)(b) and (c)) Introducing Contraband 1° (RCW 9A.76.140) Involving a Minor in Drug Dealing (RCW 69.50.401(f)) Malicious Placement of an Explosive 3° (70.74.270(3)) Manufacture, Deliver, or Possess with Intent to Deliver Heroin or Cocaine (Except When the Offender has a Criminal History in This State or any Other State that Includes a Sex Offense or Serious Violent Offense or the Washington Equivalent) (RCW 69.50.401(a)(1)(i))

**TABLE 2**  
**CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL**

Level	Standard Range* (Months)	Offense
		Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct (RCW 9.68A.060) Unlawful Possession of a Firearm 1° (RCW 9.41.040(1)(a)) Use of a Machine Gun in Commission of a Felony (RCW 9.41.225) Vehicular Homicide, by Disregard for the Safety of Others (RCW 46.61.520)
VI	12+ - 14	Bail Jumping with Murder 1° (RCW 9A.76.170(2)(a)) Bribery (RCW 9A.68.010) Incest 1° (RCW 9A.64.020(1)) Intimidating a Judge (RCW 9A.72.160) Intimidating a Juror/Witness (RCW 9A.72.110, RCW 9A.72.130)0 Malicious Placement of an Imitation Device 2° (RCW 70.74.272.(1)(b)) Manufacture, Deliver, or Possess with Intent to Deliver Narcotics from Schedule I or II (Except Heroin or Cocaine) or Flunitrazepam from Schedule IV (RCW 69.50.401(a)(1)(i)) Rape of a Child 3° (RCW 9A.44.079) Theft of a Firearm (RCW 9A.56.300) Unlawful Storage of Ammonia (RCW 69.55.020)
V	6 - 12	Abandonment of a Dependent Person 1° (RCW 9A.42.060) Advancing Money or Property for Extortionate Extension of Credit (RCW 9A.82.030) Bail Jumping with Class A Felony (RCW 9A.76.170(2)(b)) Child Molestation 3° (RCW 9A.44.089) Criminal Mistreatment 1° (RCW 9A.42.020) Custodial Sexual Misconduct 1° (RCW 9A.44.160) Delivery of Imitation Controlled Substance by Person Eighteen or Over to Person Under Eighteen (RCW 69.52.030(2)) Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070 or 74.34.145) Extortion 1° (RCW 9A.56.120) Extortionate Extension of Credit (RCW 9A.82.020) Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040) Incest 2° (RCW 9A.64.020(2)) Kidnapping 2° (RCW 9A.40.030) Perjury 1° (RCW 9A.72.020) Persistent Prison Misbehavior (RCW 9.94.070) Possession of a Stolen Firearm (RCW 9A.56.310) Rape 3° (RCW 9A.44.060) Rendering Criminal Assistance 1° (RCW 9A.76.070) Sexual Misconduct with a Minor 1° (RCW 9A.44.093) Sexually Violating Human Remains (RCW 9A.44.105)

**TABLE 2**  
**CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL**

Level	Standard Range* (Months)	Offense
		Stalking (RCW 9A.46.110) Taking Motor Vehicle Without Permission 1° (RCW 9A.56.070(1))
IV	3 - 9	Arson 2° (RCW 9A.48.030) Assault 2° (RCW 9A.36.021) Assault by Watercraft (RCW 79A.60.060) Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100) Cheating 1° (RCW 9.46.1961) Commercial Bribery (RCW 9A.68.060) Counterfeiting (9.16.035(4)) Endangerment With a Controlled Substance (RCW 9A.42.100) Escape 1° (RCW 9A.76.110) Hit and Run - Injury (RCW 46.52.020(4)(b)) Hit and Run with Vessel, Injury Accident (RCW 79A.60.200(3)) Identity Theft 1 (RCW 9.35.020(2)(a)) Indecent Exposure to Person Under Age Fourteen (Subsequent Sex Offense) (RCW 9A.88.010) Influencing Outcome of Sporting Event (RCW 9A.82.070) Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2)) Malicious Harassment (RCW 9A.36.080) Manufacture, Deliver, or Possess with Intent to Deliver Narcotics from Schedule III, IV, or V or Nonnarcotic from Schedule I-V (Except Marijuana, Amphetamine, Methamphetamine, or Flunitrazepam) (RCW 69.50.401(a)(1)(iii) through (v)) Residential Burglary (RCW 9A.52.025) Robbery 2° (RCW 9A.56.210) Theft of Livestock 1° (RCW 9A.56.080) Threats to Bomb (RCW 9.61.160) Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2)) Vehicular Assault, by being under the Influence of Intoxicating Liquor or any Drug, or by the Operation of a Vehicle in a Reckless Manner (RCW 46.61.522) Willful Failure to Return from Furlough (RCW 72.66.060)
III	1 – 3	Abandonment of a Dependent Person 2° (RCW 9A.42.070) Assault 3° (RCW 9A.36.031) Assault of a Child 3° (RCW 9A.36.140) Bail Jumping with Class B or C Felony (RCW 9A.76.170(2)(c)) Burglary 2° (RCW 9A.52.030) Communication with a Minor for Immoral Purposes (RCW 9.68A.090) Criminal Gang Intimidation (RCW 9A.46.120) Criminal Mistreatment 2° (RCW 9A.42.030) Custodial Assault (RCW 9A.36.100) Delivery of a Material in Lieu of a Controlled Substance (RCW 69.50.401(c)) Escape 2° (RCW 9A.76.120)

**TABLE 2**  
**CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL**

Level	Standard Range* (Months)	Offense
		Extortion 2° (RCW 9A.56.130) Harassment (RCW 9A.46.020) Intimidating a Public Servant (RCW 9A.76.180) Introducing Contraband 2° (RCW 9A.76.150) Maintain a Dwelling or Place for Controlled Substances (RCW 69.50.402(a)(6)) Malicious Injury to Railroad Property (RCW 81.60.070) Manufacture, Deliver, or Possess with Intent to Deliver Marijuana (RCW 69.50.401(a)(1)(iii)) Manufacture, Distribute, or Possess with Intent to Distribute an Imitation Controlled Substance (RCW 69.52.030(1)) Patronizing a Juvenile Prostitute (RCW 9.68A.100) Perjury 2° (RCW 9A.72.030) Possession of Incendiary Device (RCW 9.40.120) Possession of Machine Gun or Short Barreled Shotgun or Rifle (RCW 9.41.190) Promoting Prostitution 2° (RCW 9A.88.080) Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1)) Securities Act Violation (RCW 21.20.400) Tampering with a Witness (RCW 9A.72.120) Telephone Harassment (Subsequent Conviction or Threat of Death) (RCW 9.61.230) Theft of Livestock 2° (RCW 9A.56.080) Unlawful Imprisonment (RCW 9A.40.040) Unlawful Possession of Firearm 2° (RCW 9.41.040(1)(b)) Unlawful Use of Building for Drug Purposes (RCW 69.53.010) Vehicular Assault, by the Operation or driving of a Vehicle with Disregard for the Safety of Others (RCW 46.61.522) Willful Failure to Return from Work Release (RCW 72.65.070)
II	0 - 3	Computer Trespass 1° (RCW 9A.52.110) Counterfeiting (RCW 9.16.035(3)) Create, Deliver, or Possess a Counterfeit Controlled Substance (RCW 69.50.401(b)) Escape from Community Custody (RCW 72.09.310) Health Care False Claims (RCW 48.80.030) Identity Theft 2° (RCW 9.35.020(2)(b)) Improperly Obtaining Financial Information (RCW 9.35.010) Malicious Mischief 1° (RCW 9A.48.070) Possession of Controlled Substance that is Either Heroin or Narcotics from Schedule I or II or Flunitrazepam from Schedule IV (RCW 69.50.401(d)) Possession of Phencyclidine (PCP) (RCW 69.50.401(d)) Possession of Stolen Property 1° (RCW 9A.56.150) Theft 1° (RCW 9A.56.030) Theft of Rental, Leased, or Lease-purchased Property (Valued at \$1,500 or More) (RCW 9A.56.096(4))

**TABLE 2**  
**CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL**

Level	Standard Range* (Months)	Offense
		Trafficking in Insurance Claims (RCW 48.30A.015) Unlawful Practice of Law (RCW 2.48.180) Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
I	0 - 2	Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024) False Verification for Welfare (RCW 74.08.055) Forged Prescription (RCW 69.41.020) Forged Prescription for a Controlled Substance (RCW 69.50.403) Forgery (RCW 9A.60.020) Malicious Mischief 2° (RCW 9A.48.080) Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Nonnarcotic from Schedule I-V (Except Phencyclidine or Flunitrazepam) (RCW 69.50.401(d)) Possession of Stolen Property 2° (RCW 9A.56.160) Reckless Burning 1° (RCW 9A.48.040) Taking Motor Vehicle without Permission 2° (RCW 9A.56.070(2)) Theft 2° (RCW 9A.56.040) Theft of Rental, Leased, or Lease-purchased Property (Valued at \$250 or More but Less than \$1,500) (RCW 9A.56.096(4)) Unlawful Issuance of Checks or Drafts (RCW 9A.56.060) Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3)) Vehicle Prowl 1° (RCW 9A.52.095)

\*The standard range listed is for an offender score of zero.

## DETERMINING THE OFFENDER SCORE

Offender score, one factor affecting a felony sentence, is measured on the horizontal axis of the sentencing guidelines grid. An offender may receive from 0 to 9+ points on that axis. In general, the number of points an offender receives depends on five factors: (1) the number of prior felony criminal convictions; (2) the relationship between any prior offense(s) and the current offense of conviction; (3) the presence of multiple prior or current convictions; (4) the offender's community placement status at the time the crime was committed; and (5) the length of the offender's crime-free behavior between offenses.

### CRIMINAL HISTORY COLLECTION

Pursuant to RCW 9.94A.030(13), criminal history includes the defendant's prior adult convictions state and federal, and juvenile court dispositions. In some instances, the effect of criminal history is related to the felony class of the crime (Class A, Class B or Class C). Appendix B contains a list of felony offenses by class and an explanation of how to determine the class of a felony.

#### Adult Criminal History

The Criminal Justice Information Act (RCW 10.98) established the Washington State Patrol Identification and Criminal History Section (the Section) as the primary source of information on state felony conviction histories. After filing charges, prosecutors contact the Section for an offender's Washington criminal history. The Act directs judges to ensure that felony defendants are fingerprinted and that arrest and fingerprint forms are transmitted to the Washington State Patrol (RCW 10.98.050(2)). Prosecutors obtain out-of-state or federal criminal history information from the Federal Bureau of Investigation or other appropriate sources.

An offender's criminal history consists almost exclusively of *felony* convictions. A conviction is defined as a verdict of guilty, a finding of guilty or an acceptance of a plea of guilty. A prior conviction is defined as one existing before the date of the sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed are deemed "other current offenses" within the meaning of RCW 9.94A.589.

RCW 9.94A.030 provides that when the information is available, criminal history should include the length and terms of any probation and/or incarceration. This information is often collected as part of the Pre-sentence Investigation Report.

#### Juvenile Criminal History

All felony dispositions in juvenile court must be counted as criminal history for purposes of adult sentencing, except under the general "wash-out" provisions that apply to adult offenses. Juvenile offenses sentenced on the same day must be counted separately unless they constitute the "same criminal conduct" as defined in RCW 9.94A.589(1)(a) or unless the date of the offenses were prior to July 1, 1986.

Although juvenile records generally are sealed, RCW 13.50.050(10) provides that after a charge has been filed, juvenile offense records of an adult criminal defendant or witness in an adult criminal



proceeding shall be released upon request to the prosecution and defense counsel, subject to the rules of discovery. An adult felony charge nullifies the sealing of a juvenile record. (RCW 13.50.050(16)).

### "Wash Out" of Certain Prior Felonies

The rules governing which prior convictions are included in the offender score can be found in RCW 9.94A.525(2) and are summarized as follows:

- Prior Class A and felony sex convictions are always included in the offender score.
- Prior Class B (juvenile or adult) felony convictions other than sex offenses are *not* included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or since the entry of judgment and sentence, the offender had spent ten consecutive years in the community without having been convicted of any crime.
- Prior Class C (juvenile or adult) felony convictions other than sex offenses are *not* included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or since the entry of judgment and sentence, the offender had spent five consecutive years in the community without having been convicted of any crime.
- Prior (juvenile or adult) serious traffic convictions are *not* included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or since the entry of judgment and sentence, the offender had spent five years in the community without having been convicted of any crime.

The Sentencing Reform Act permits vacating records of conviction under certain conditions and provides that vacated convictions "shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction." RCW 9.94A.640. Vacation of conviction record does not affect or prevent the use of an offender's prior conviction in a later criminal prosecution.

The eligibility rules for vacation of conviction record are similar to the "wash-out" rules. Because the washout rules are automatic and do not require court action, an offense will "wash out" before formal record vacation occurs. (The main distinction between vacation of record of conviction and "wash-out" is that, after vacation, an offender may indicate on employment forms that he or she was not convicted of that crime.)

### Federal, Out-of-state or Foreign Convictions

In order for a prior federal, out-of-state or foreign conviction to be included in an offender's history and thereby affect the offender score, the elements of the offense in other jurisdictions must be compared with Washington State laws. (RCW 9.94A.525(3)). In instances where the foreign conviction is not clearly comparable to an offense under Washington State law, or where the offense is usually considered a felony subject to exclusive federal jurisdiction, the offense is scored as a Class C felony equivalent.

## SCORING CRIMINAL HISTORY

Once relevant prior convictions are identified, the criminal history portion of the offender score may be calculated. The rules for scoring prior convictions are contained in RCW 9.94A.525. It should be noted that the scoring rules for some offenses are calculated differently, depending upon the category of the offense. (*See RCW 9.94A.525*). To make application of these rules easier, the offense reference sheets and scoring forms found in Section III of this Manual specify the correct number of points for prior convictions depending on the current offense. The forms are intended to provide assistance in most cases but do not cover all permutations of the scoring rules. A thorough understanding of the criminal history rules is important in order to use these forms correctly and to perform calculations not covered by the forms.

General consideration should also be given to often-applicable exceptions to general scoring rules. For instance, misdemeanors generally are not included in offender score calculations. An exception exists where the current conviction is for a felony traffic offense.<sup>1</sup> In such cases, serious traffic offenses<sup>2</sup> are included in the offender score. Additionally, with present convictions of anticipatory offenses (criminal attempt, solicitation or conspiracy) prior convictions of felony anticipatory offenses count the same and are scored as if they were convictions for completed offenses. *See RCW 9.94A.525(4)-(6)*.

An exception should also be noted for convictions with a finding of sexual motivation. A finding of sexual motivation changes the underlying offense to a sex offense as defined in RCW 9.94A.030(38), changing the scoring rules and influencing the sentence options. This scoring rule only applies to crimes committed on or after July 1, 1990. *See RCW 9.94A.525 (16)*.

## SCORING MULTIPLE CURRENT CONVICTIONS

Multiple convictions may also influence the offender score. For multiple current offenses, separate sentence calculations are necessary for *each* offense because the law requires that each receive a separate sentence (RCW 9.94A.589), unless the offenses are ruled the same criminal conduct (RCW 9.94A.589(1)(a)).

### Multiple Offense Scoring Steps:

- (A) If the current offenses do *not* include two or more serious violent offenses<sup>3</sup> arising from separate and distinct criminal conduct, apply RCW 9.94A.589(1)(a):
- Calculate the score for *each* offense.

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<sup>1</sup> Vehicular Homicide, Vehicular Assault, Hit-and-Run Injury Accident and Attempting to Elude a Pursuing Police Vehicle.

<sup>2</sup> RCW 9.94A.030(36) provides: "Serious traffic offense" means: (a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or (b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

<sup>3</sup> RCW 9.94A.030(37) provides: "'Serious violent offense' is a subcategory of violent offense and means: (a) Murder 1°, Homicide by Abuse, Murder 2°, Assault 1°, Kidnapping 1°, Rape 1°, Manslaughter 1°, Assault of a Child 1°, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or (b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection."

- For each offense, score the prior adult and juvenile convictions. Also, score the other current offenses on the scoring form line entitled "Other Current Offenses."
  - The court may find that some or all of the current offenses encompass the same criminal conduct<sup>4</sup> and are to be counted as one crime.
  - In cases of Vehicular Homicide or Vehicular Assault with multiple victims, offenses against each victim may be charged as separate offenses, even if the victims occupied the same vehicle. The resulting multiple convictions need not be scored as constituting the same criminal conduct.
  - Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed are scored as "other current offenses" (*See RCW 9.94A.589(1)(a)*).
- (B) If the current offenses include two or more serious violent offenses arising from separate and distinct conduct, apply RCW 9.94A.589(1)(b):
- Calculate the score for *each* offense.
  - Identify the serious violent offense with the *highest* seriousness level. Calculate the sentence for that crime using the offender's prior adult and juvenile convictions. Do not include any other current serious violent offenses as part of the offender score, but do include other current offenses that are not serious violent offenses.
  - Score all remaining serious violent current offenses, calculating the sentence for the crime using an offender score of *zero*.
  - For any current offenses that are not serious violent offenses, score according to the rules in (A) above.
- (C) If the current offenses include Unlawful Possession of a Firearm in the First or Second Degree and one, or both, of the felony crimes of Theft of a Firearm or Possession of a Stolen Firearm, score according to the rules in RCW 9.94A.589(1)(c).

Example: Assume that an offender is convicted of one count of First Degree Theft and one count of Forgery with both offenses arising from separate and distinct criminal conduct and that the offender's criminal history consisted of one conviction for Second Degree Burglary. In this case, the rules in RCW 9.94A.589(1)(a) apply, and the theft and forgery must be separately scored. The prior burglary and the current forgery are included in the offender score for the theft, resulting in an offender score of two and a sentence range of three to nine months. The prior burglary and the current theft are included in the offender score for the forgery, resulting in an offender score of two and a sentence range of two to five months. The sentence for each offense should run concurrently.

Example: Assume that an offender is convicted of one count of Second Degree Theft and one count of Second Degree Possession of Stolen Property in a circumstance where both counts encompassed the same criminal conduct, and that the offender had no criminal history. In this case, the other current offense is not counted in the offender score because under RCW 9.94A.589(1)(a) where current offenses are found to encompass the same criminal conduct, those current offenses shall be

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<sup>4</sup> RCW 9.94A.589(1)(a) provides: "...`Same criminal conduct'... means...two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim." Cases involving vehicular homicide or vehicular assault need not be considered same criminal conduct.

counted as one crime. Therefore, the theft and possession would both be scored with offender scores of zero, with a sentence range for each crime of 0 to 60 days. The sentence for each offense run concurrently.

Example: Assume that an offender is convicted of two counts of First Degree Kidnapping and one count of First Degree Assault. These offenses, constitute serious violent offenses. Assume further that these offenses arose from separate and distinct criminal conduct and that the offender's criminal history consists of one Third Degree Assault conviction. The scoring for this offender follows the rules in RCW 9.94A.589(1)(b). First, the crime with the highest seriousness level must be identified and scored. Since First Degree Assault is more serious (Level XII) than First Degree Kidnapping (Level X), that offense is scored by counting the prior Third Degree Assault as part of the adult criminal history. This calculation results in an offender score of one and a sentence range of 102 to 136 months. Next, the First Degree Kidnapping convictions are scored using a criminal history of zero. These calculations result in two sentence ranges of 51 to 68 months. The three sentences run *consecutively*.

Example: Assume an offender is convicted on one count of Third Degree Assault, with a criminal history consisting of adult convictions for Second Degree Theft and Forgery and one adjudication of Second Degree Assault as a juvenile. Pursuant to RCW 9.94A.589(1)(a), the prior Second Degree Theft and Forgery are included in the offender score as one point each, and the juvenile Second Degree Assault also scores as one point, resulting in an offender score of three points. The sentence range is 9 to 12 months.

## **SCORING OFFENDER STATUS WHILE ON COMMUNITY PLACEMENT**

The offender score also reflects whether the offense was committed while the offender was under community placement. An additional point is added to the offender score for crimes committed on or after July 1, 1988 while the offender was on community placement. RCW 9.94A.525(17).

## **DETERMINING THE STANDARD SENTENCE RANGE**

### **SENTENCING GRID**

Once the offense seriousness level has been determined and the offender score has been calculated, the presumptive standard sentence range may be identified.

The standard sentence range is established by referring to the sentencing grid (RCW 9.94A.510, .515, and .517, Table 1, page I-2). For each current offense, the intersection of the column defined by the offender score and the row defined by the offense seriousness level determines the standard sentence range. Alternatively, the same range is identified for individual offenses on the offense reference sheets in Section III of this Manual. In those cases where the presumptive sentence exceeds the statutory maximum sentence for the crime, the statutory maximum sentence is the presumptive sentence (RCW 9.94A.599), as shown on the offense reference sheets in Section III of this Manual.

Sentences for drug crimes committed on or after July 1, 2003 should be calculated and entered in accordance with the grid set forth in Table \_\_\_\_

Sentences for certain non-drug crimes committed on or after July 1, 2002 should be calculated and entered in accordance with the grid and offenses listed at each seriousness level as set forth in Tables 1 and 2 in this Manual.

Sentences for crimes committed on or after July 25, 1999, and not affected by the 2002 amendments to the SRA, should be determined by reference to Tables 1 and 2 in this Manual.

Sentences for crimes committed on or after July 27, 1997 and before July 25, 1999, should be determined by reference to Sentencing Grid C in Appendix D.

Sentences for crimes committed on or after July 1, 1990 and before July 27, 1997, should be determined by reference to Sentencing Grid B in Appendix D.

Sentences for crimes committed prior to July 1, 1990, should be determined by reference to Sentencing Grid A in Appendix D.

### **ANTICIPATORY OFFENSES (Non-VUCSA Attempts, Conspiracies and Solicitations)**

The standard sentence range for persons convicted of an anticipatory offense (criminal attempt, solicitation or conspiracy) is 75 percent of the standard sentence range of the completed offense, determined by using the offender score and offense seriousness level. RCW 9.94A.595. For aid in calculating the range, refer to the anticipatory offense grid reproduced in the following Table 3.

**TABLE 3**  
**ANTICIPATORY OFFENSE GRID**  
**(75% of the standard sentence range for completed offenses in months)**  
**(Does not apply to attempts or conspiracies to violate the**  
**Uniform Controlled Substance Act)**

Seriousness Level	LOW END OF RANGE (in months)									
	Offender Score									
	0	1	2	3	4	5	6	7	8	9/more
XV	180.00	187.50	195.75	203.25	210.75	218.25	234.00	253.50	227.50	308.25
XIV	92.25	100.50	108.00	115.50	123.75	131.25	146.25	162.00	192.75	223.50
XIII	92.25	100.50	108.00	115.50	123.75	131.25	146.25	162.00	192.75	223.50
XII	69.75	76.50	83.25	90.00	96.75	103.50	121.50	133.50	156.75	180.00
XI	58.50	64.50	71.25	76.50	83.25	90.00	109.50	119.25	138.75	157.50
X	38.25	42.75	46.50	50.25	54.00	57.75	73.50	81.00	96.75	111.75
IX	23.25	27.00	30.75	34.50	38.25	42.75	57.75	65.25	81.00	96.75
VIII	15.75	19.50	23.25	27.00	30.75	34.50	50.25	57.75	65.25	81.00
VII	11.25	15.75	19.50	23.25	27.00	30.75	42.75	50.25	57.75	65.25
VI	9.00	11.25	15.75	19.50	23.25	27.00	34.50	42.75	50.25	57.75
V	4.50	9.00	9.75	11.25	16.50	24.75	30.75	38.25	46.50	54.00
IV	2.25	4.50	9.00	9.75	11.25	16.50	24.75	32.25	39.75	47.25
III	0.75	2.25	3.00	6.75	9.00	12.75	16.50	24.75	32.25	38.25
II	0.00	1.50	2.25	3.00	9.00	10.50	12.75	16.50	24.75	32.25
I	0.00	0.00	1.50	1.50	2.25	3.00	9.00	10.50	12.75	16.50

Seriousness Level	HIGH END OF RANGE (in months)									
	Offender Score									
	0	1	2	3	4	5	6	7	8	9/more
XV	240.00	249.75	260.25	270.75	280.50	291.00	312.00	337.50	369.75	411.00
XIV	165.00	175.50	183.00	190.50	198.75	206.25	221.25	237.00	267.75	297.75
XIII	123.00	133.50	144.00	153.75	164.25	174.75	195.00	216.00	256.50	297.75
XII	92.25	102.00	110.25	120.00	128.25	138.00	162.00	177.00	207.75	238.50
XI	76.50	85.50	93.75	102.00	110.25	118.50	145.50	158.25	183.75	210.00
X	51.00	56.25	61.50	66.75	72.00	76.50	97.50	108.00	128.25	148.50
IX	30.75	36.00	40.50	45.75	51.00	56.25	76.50	87.00	108.00	128.25
VIII	20.25	25.50	30.75	36.00	40.50	45.75	66.75	76.50	87.00	108.00
VII	15.00	20.25	25.50	30.75	36.00	40.50	56.25	66.75	76.50	87.00
VI	10.50	15.00	20.25	25.50	30.75	36.00	45.75	56.25	66.75	76.50
V	9.00	10.50	12.75	15.00	21.75	32.25	40.50	51.00	61.50	72.00
IV	6.75	9.00	10.50	12.75	15.00	21.75	32.25	42.75	52.50	63.00
III	2.25	6.00	9.00	9.00	12.00	16.50	21.75	32.25	42.75	51.00
II	2.25	4.50	6.75	9.00	10.50	13.50	16.50	21.75	32.25	42.75
I	1.50	2.25	3.75	4.50	6.00	9.00	10.50	13.50	16.50	21.75

Note: The "low end" indicates the bottom end of the standard range, and the "high end" category indicates the top of the range. Determine the Seriousness Level and Offender Score; then find the low end of the range from the first grid and the high end from the second.

## ATTEMPTS, CONSPIRACIES AND SOLICITATIONS TO VIOLATE THE UNIFORMED CONTROLLED SUBSTANCES ACT (“VUCSA” OFFENSES)

The calculation of sentences stemming from anticipatory VUCSA offenses (RCW 69.50) presents different challenges than calculating sentences for anticipatory offenses arising under the criminal code.

An attempt or conspiracy to commit a drug offense is specifically addressed in RCW 69.50.407, which provides that such offenses are punishable by "...imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense..." The appellate courts have consistently held that for VUCSA offenses, RCW 69.50.407 takes precedence over RCW 9A.28. Although current statute and case law should be reviewed for definitive guidance in this area, the following summarizes current sentencing practices:

An attempt or conspiracy to commit a drug offense is typically sentenced as an “unranked” offense (0-12 months). In *State v. Mendoza*, the Court of Appeals held that since “a conspiracy conviction under RCW 69.50.407 has no sentencing directions from the Legislature, it is punished under the unspecified crimes provisions of RCW 9.94A.505(2)(b).” 63 Wn. App. 373 (1991).

A *solicitation* to commit a drug offense is not specifically addressed in RCW 69.50. It is usually charged under RCW 9A.28 and sentenced under RCW 9.94A.510(2) at 75 percent of the standard range. Solicitations to commit VUCSA offenses are not considered “drug offenses”, but do score as such and are subject to the multiple “scoring” requirement. See RCW 9.94A.525(4), (6) and *State v. Howell*, 102 Wn. App. 288, 6 P. 3d 1201 (2000).

Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

A solicitation to commit a Class C felony is a gross misdemeanor under RCW 9A.28.

## FELONY TRAFFIC ENHANCEMENT

The 1998 Legislature added a two-year enhancement to the presumptive sentence for Vehicular Homicide while Under the Influence of Intoxicating Liquor or any Drug, under RCW 46.61.502. A two-year enhancement is added for *each prior offense* as defined in RCW 46.61.505<sup>5</sup>. The enhancement portion is subject to earned release time.

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<sup>5</sup> RCW 46.61.505(11): A “prior offense” means any of the following:

- (i) A conviction of a violation of RCW 46.61.502 or equivalent local ordinance;
- (ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;
- (iii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;
- (iv) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;
- (v) A conviction for a violation of RCW 46.61.5249 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or RCW 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or RCW 46.61.522;
- (vi) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (iii), (iv), or (v) of this subsection if committed in this state;
- (vii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, RCW 46.61.504, or an equivalent local ordinance; or
- (viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522; and

## DEADLY WEAPON ENHANCEMENT

For specified crimes, when a court makes a finding of fact or when a jury returns a special verdict finding that the accused or an accomplice was armed with a deadly weapon<sup>6</sup> at the time of the commission of the crime, the sentence must be enhanced, increased.

The deadly weapon sentence enhancement also applies to anticipatory offenses, which include attempts, conspiracies and solicitations to commit a crime. (RCW 9.94A.510(3), (4). Additional time under a deadly weapon enhancement is added to the sentence *after* it has been calculated based on the particular seriousness level and the offender score (RCW 9.94A.530), and after the range adjustment for any anticipatory offense (if appropriate).

Initiative 159, "Hard Time for Armed Crime," was passed during the 1995 legislative session and became effective for offenses committed after July 23, 1995. This initiative increased penalties and expanded the range of crimes eligible for weapon enhancements. Enhancements apply to all felonies except where the use of a firearm is an element of the offense (Possession of a Machine Gun, Possession of a Stolen Firearm, Drive-by Shooting, Theft of a Firearm, Unlawful Possession of a Firearm in the First and Second Degrees and Use of a Machine Gun in a Felony). Weapon enhancements for firearms differ from enhancements for deadly weapons other than firearms. For scoring, see page III-18 and III-19 for the weapon enhancement scoring forms, including for offenses committed prior to July 24, 1995. If the presumptive standard range sentence exceeds the statutory maximum for the offense, the statutory maximum sentence becomes the presumptive sentence, unless the offender is a persistent offender, as defined in RCW 9.94A.030(32). The 1998 Legislature required that if the firearm enhancement or the deadly weapon enhancement increases a sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced. As a result, in such a case the underlying sentence must be reduced so that the total confinement time does not exceed the statutory maximum. This takes effect for crimes committed on or after June 11, 1998.

Figure 1 outlines the weapon enhancements for each type of offense and offender:

**Figure 1. Weapon Enhancements\***

FIREARM ONLY		
Class	First Offense	Repeat Offender**
A	60 Months	120 Months
B	36 Months	72 Months
C	18 Months	36 Months

(b) "Within seven years" means that the arrest for a prior offense occurred within seven years of the arrest for the current offense

<sup>6</sup> RCW 9.94A.602 provides: Deadly Weapon means "...an implement or instrument which has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: Blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas."



### OTHER DEADLY WEAPON

Class	First Offense	Repeat Offender**
A	24 Months	48 Months
B	12 Months	24 Months
C	6 Months	12 Months

\*All firearm and other deadly weapon enhancements are mandatory, shall be served in total confinement and shall run consecutively to all other sentencing provisions, including other additional firearm or other deadly weapon enhancements, for all offenses sentenced under RCW 9.94A.510.

\*\* To be sentenced as a repeat offender, the offense with a weapon finding must have occurred after July 23, 1995.

If an offender is being sentenced for more than one offense, the firearm enhancement and other enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement.

### DRUG-RELATED ENHANCEMENTS

Enhancements to the presumptive range are required for certain drug offenses that occur in a protected zone (RCW 9.94A.510(6)) or in correctional facilities (RCW 9.94A.510(5)).

#### Protected Zone

If an offender is sentenced for committing certain drug offenses in a protected zone, 24 months are added to the presumptive sentence, and the maximum imprisonment and fine are doubled (RCW 69.50.435).<sup>7</sup> Protected zones include the following:

- Schools or school buses;
- 1,000 feet of a school bus route stop or a school ground perimeter;
- Public parks;
- Public transit vehicles or public transit stops;
- Civic centers or public housing projects designated as a drug-free zone by the local governing authority; or
- 1,000 feet of the perimeter of a facility designated as a civic center, if the local governing authority specifically designates the 1,000-foot perimeter.

When a convicted drug offender is subject to both RCW 69.50.435 (which doubles the maximum sentence that may be imposed for a drug offense committed in or near a public place or facility as specified by the statute) and RCW 9.94A.510(3) (which mandates enhanced sentences for offenses committed while armed with a firearm), the maximum sentence for the firearm enhancement should

<sup>7</sup> Drug offenses include violations of RCW 69.50.401(a): manufacturing, selling, delivering, or possessing with intent to manufacture, sell or deliver a controlled substance; and RCW 69.50.410: Selling for profit any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana.

equal the statutory maximum for the offenses as doubled by RCW 69.50.435. *State v. Barajas*, 88 Wn. App 387 (1997).

### Presence of a Child

When an offender is convicted of the manufacture of a controlled substance under RCW 69.50.401, (a) relating to the manufacture of methamphetamine; or (b) possession of ephedrine or pseudo-ephedrine with intent to manufacture methamphetamine, and there was a special allegation proven that the offender committed the crime when a person under the age of eighteen was present in or upon the premises of the manufacture, then 24 months are added to the presumptive sentence.

### Correctional Facility

If an offender or an accomplice committed certain violations of the Uniform Controlled Substance Act (VUCSA) while in a county jail or state correctional facility, the following additional time is added to the presumptive sentence range:

**Figure 2. VUCSA Offense Enhancements in a Correctional Facility**

<b>Crime</b>	<b>Enhancement</b>
Manufacture, Deliver, Possess with Intent to Deliver Heroin or Cocaine	18 Months
Manufacture, Deliver, Possess with Intent to Deliver Schedule I or II Narcotics (Except Heroin or Cocaine) or Flunitrazepam from Schedule IV	18 Months
Selling for Profit (Controlled or Counterfeit) Any Controlled Substance	18 Months
Deliver or Possess with Intent to Deliver Methamphetamine	18 Months
Manufacture of Methamphetamine	18 Months
Manufacture, Deliver, Possess with Intent to Deliver Amphetamine	18 Months
Manufacture, Deliver, Possess with Intent to Deliver Schedule III-V Narcotics or Schedule I-V Nonnarcotic (Except Marijuana, Amphetamine, Methamphetamine or Flunitrazepam)	15 Months
Manufacture, Deliver, Possess with Intent to Deliver Marijuana	15 Months
Possession of Controlled Substance that is either Heroin or Narcotics from Schedule I or II or Flunitrazepam from Schedule IV	12 Months
Possession of Phencyclidine (PCP)	12 Months
Possession of a Controlled Substance that is a Narcotic from Schedule III-V or Nonnarcotic from Schedule I-V (Except Phencyclidine)	12 Months

## **DETERMINING THE SENTENCING OPTIONS**

The sentencing options available to a court vary depending on the offender's criminal history and the crime(s) of conviction. The court must impose a determinate sentence<sup>8</sup> in every case.

The following sections examine the standard sentence range, alternative sentencing options and supervision in the community. Sentencing options include the First-time Offender Waiver (FTOW), the Drug Offender Sentencing Alternative (DOSA), the Special Sex Offender Sentencing Alternative (SSOSA), Work Ethic Camp (WEC), Work Crew, sentence enhancements, home detention and other alternatives. Please refer to the individual offense reference sheets in Section III of this Manual for the sentencing options available for individual felonies.

### **TERMS OF CONFINEMENT**

#### **STANDARD SENTENCE RANGE**

The sentencing grid prescribes the standard sentence range for the most commonly charged felonies. RCW 9.94A.599 provides that if the presumptive sentence duration given in the sentencing grid exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence.

The ranges in the sentencing grid are expressed in terms of total confinement. A term of confinement of one year and one day (12+), or a sentence under the Drug Offender Sentencing Alternative, is to be served in a state facility or institution. In addition, any sex offense sentenced under RCW 9.94A.712 of one year or less will be served in a state facility or institution. A term of one year or less (other than those described above) is to be served in a county facility unless, when combined with other felony terms, the total time to be served exceeds one year (RCW 9.94A.190). A court may convert total confinement sentences to partial confinement or community service (see the discussion of alternative conversions, page I-35) for some offenders. Offenders who have received a sentence greater than one year, and who also have received another sentence less than one year, are required to serve the entire period of time in a state institution.

#### **“UNRANKED” CRIMES**

Offenders convicted of “unranked crimes,” crimes without an established seriousness level, are not subject to standard sentence ranges. In such cases, courts are required to impose a determinate sentence which may include not more than one year of confinement and may also include community service, legal financial obligations, a term of community supervision not to exceed one year and/or a fine. Orders of confinement longer than one year constitute exceptional sentences, which must be justified in writing. (RCW 9.94A.505(2)(b)).

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<sup>8</sup> RCW 9.94A.030(17) provides: "...a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation. . ."

## PERSISTENT OFFENDERS

Voters approved Initiative 593 ("Three Strikes and You're Out") in 1993. The law, which became effective on December 2, 1993, established the penalty of life in prison without the possibility of release for "persistent offenders." The life sentence applies to both "Three Strikes" and "Two Strikes" offenders.

### "Three Strikes"

The original "Three Strikes" legislation defined a "persistent offender" as an offender who is convicted of a "most serious offense" and who has at least two prior convictions for most serious offenses that would be included in the offender score under 9.94A.525. In order to be applicable to the three strikes statute, the first prior conviction must have occurred before the second prior conviction offense was committed. A "most serious offense" is defined as any of a list of enumerated offenses. (*See RCW 9.94A.030(28)*). The definition includes any Class B felony committed with sexual motivation and any felony committed with a deadly weapon.

### "Two Strikes"

The definition of persistent offender also includes "Two Strike" sex offenders. To qualify as a persistent sex offender, an offender must have two separate convictions of specified sex offenses. The 1997 Legislature broadened the list of offenses that qualify as strikes under the "Two Strike" law. The specific offenses qualifying as "Two Strikes" are enumerated in RCW 9.94A.030(32)(b) and include: a) Rape First Degree, Rape Second Degree, Indecent Liberties by Forcible Compulsion, Rape of a Child First Degree (where the offender was age 16 or older at the time of the offense) Rape of a Child Second Degree (where the offender was 18 or older at the time the offense), Child Molestation in the First Degree; or b) Murder First Degree, Murder Second Degree, Kidnapping First Degree, Kidnapping Second Degree, Assault First Degree, Assault Second Degree, Burglary First Degree, Homicide by Abuse or Assault of a Child in the First Degree with a finding of sexual motivation; or c) an attempt to commit any of the crimes listed above. An offender convicted of one of these offenses, who has at least one previous conviction for one of these offenses, must be sentenced to life in prison without the possibility of release.

## NONPERSISTENT SEX OFFENDERS

During the 2001 Second Special Session, the Legislature enacted 3ESSB 6151 – The Management of Sex Offenders in the Civil Commitment and Criminal Justice Systems. Any offender, who is not a persistent offender, who is sentenced for any one of the offenses enumerated in RCW 9.94A.712(1)(a)(i) or (ii), or an attempt to commit any of those offenses, or is convicted of any sex offense, except failure to register, and has a prior conviction for a "two-strike" offense under RCW 9.94A.030(32)(b), must be sentenced to an indeterminate term. This sentencing rule does not apply to offenders seventeen years old or younger at the time of the offense and who have been convicted of rape of a child in the first degree, rape of a child in the second degree or child molestation in the first degree.

A "6151" sentence must contain a minimum term of confinement that falls within the standard range, according to the seriousness level of the offense and the offender score, and a maximum term

equaling the statutory maximum sentence for the offense. The minimum term may also constitute an exceptional sentence as provided by RCW 9.94A.535. Sixty-one fifty one offenders are eligible for earned release pursuant to RCW 9.94A.728; given the opportunity of receiving sex offender treatment while incarcerated; and are eligible for the Special Sex Offender Sentencing Alternative as provided in RCW 9.94A.670. Additionally, all sentences under this provision must be served in prison, regardless of the sentence length.

Offenders sentenced under “6151” fall under the purview of the Indeterminate Sentence Review Board through the maximum term of the sentence. Those released from prison will be supervised by the Department of Corrections and will remain on community custody through the maximum term of the sentence.

## **EXCEPTIONAL SENTENCES**

The standard sentence range is presumed to be appropriate for the *typical* felony case. The SRA, at RCW 9.94A.535, however, provides that the court "may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

An exceptional sentence must be for a determinate term and cannot exceed the statutory maximum for the crime. In the case of the five crimes with statutory mandatory minimum sentences (Aggravated First Degree Murder, First Degree Murder, First Degree Assault, First Degree Assault of a Child and First Degree Rape), an exceptional sentence cannot include a term less than the mandatory minimum term of confinement (RCW 10.95.030 and RCW 9.94A.540). Accordingly, persistent offenders sentenced to life in prison are not eligible for exceptional sentences (RCW 9.94A.570).

Before imposing a sentence outside a standard range, the court must set forth the reasons for the decision in written Findings of Fact and Conclusions of Law (RCW 9.94A.535). The same requirement applies when the court departs from the consecutive/concurrent policy in RCW 9.94A.589(1) and (2). Exceptional sentences may be appealed to the Court of Appeals by the defendant or by the prosecutor.

RCW 9.94A.535 provides an illustrative list of factors the court may consider in deciding whether to impose an exceptional sentence. These mitigating and aggravating circumstances for exceptional sentences are provided as examples and are not intended to be exclusive reasons for departures:

### Mitigating Circumstances for Exceptional Sentences

- To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.
- Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.
- The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense, but which significantly affected his or her conduct.

- The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.
- The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired (voluntary use of drugs or alcohol is excluded).
- The offense was principally accomplished by another person, and the defendant manifested extreme caution or sincere concern for the safety or well being of the victim.
- The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of the Sentencing Reform Act, as expressed in RCW 9.94A.010.
- The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense, and the offense is a response to that abuse.

#### Aggravating Circumstances for Exceptional Sentences

- The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.
- The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability or ill health.
- The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:
  - (a) The current offense involved multiple victims or multiple incidents per victim;
  - (b) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;
  - (c) The current offense involved a high degree of sophistication or planning, or occurred over a lengthy period of time; or
  - (d) The defendant used his or her position of trust, confidence or fiduciary responsibility to facilitate the commission of the current offense.
- The current offense was a major violation of the Uniform Controlled Substances Act (VUCSA, RCW Chapter 69.50), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition. The presence of any of the following may identify an offense as a major VUCSA offense:
  - (a) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;
  - (b) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;
  - (c) The current offense involved the manufacture of controlled substances for use by other parties;
  - (d) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

- (e) The current offense involved a high degree of sophistication or planning, or occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or
  - (f) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician or other medical professional).
- The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.
  - The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of 18 years, manifested by multiple incidents over a prolonged period of time.
  - The current offense involved domestic violence, as defined in RCW 10.99.020 and one or more of the following was present:
    - (a) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;
    - (b) The offense occurred within sight or sound of the victim's or offender's minor children under the age of eighteen years; or
    - (c) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.
  - The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of the purpose of the Sentencing Reform Act, as expressed in RCW 9.94A.010.
  - The defendant's prior un-scored misdemeanor or prior un-scored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of the Sentencing Reform Act as expressed in RCW 9.94A.010.
  - The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.
  - The offense resulted in the pregnancy of a child rape victim.
  - The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

## CONSECUTIVE AND CONCURRENT SENTENCES

RCW 9.94A.589 sets forth several rules regarding consecutive and concurrent sentences. Generally, sentences for multiple offenses set at one sentencing hearing are served concurrently unless there are two or more separate serious violent offenses or weapon offenses. In those cases, the sentences are served consecutively. In some cases, the decision to run the sentences consecutively or concurrently is discretionary, but in others, a departure from the policy requires an exceptional sentence. The specific rules are as follows:

### Sentencing Persons Convicted of Multiple Offenses

Except for convictions of two or more separate serious violent offenses, deadly weapon enhancements and certain firearm-related sentences, all sentences for multiple offenses are served concurrently. (*See* RCW 9.94A.589(1)(a)). Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed are deemed "other current offenses" within the meaning of RCW 9.94A.589.

### Multiple Serious Violent Offenses

In the case of two or more serious violent offenses arising from separate and distinct criminal conduct, the sentences for these serious violent offenses are served consecutively to each other and concurrently with any other sentences imposed for current offenses (RCW 9.94A.589(1)(b)). A departure from this rule requires an exceptional sentence (RCW 9.94A.535).

### Certain Firearm-related Offenses

In the case of an offender convicted of Unlawful Possession of a Firearm in the First or Second Degree *and* for one or both of the crimes of Theft of a Firearm or Possession of a Stolen Firearm, the sentences for these crimes are served consecutively for each conviction of the felony crimes listed and for each firearm unlawfully possessed<sup>9</sup>. A departure from this rule requires an exceptional sentence (RCW 9.94A.535).

### Weapon Enhancements

In the case of an offender receiving a deadly weapon enhancement for offenses committed after July 23, 1995, the deadly weapon enhancement portion of the standard range is served consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements (RCW 9.94A.510). A departure from this rule requires an exceptional sentence (RCW 9.94A.535).

### Felony Committed While Offender was Under Sentence for Another Felony

Whenever a current offense is committed while the offender is under sentence for a previous felony and the offender was also sentenced for another term of imprisonment, the latter term may not begin until expiration of all prior terms (RCW 9.94A.589(2)). A departure from this rule requires an exceptional sentence (RCW 9.94A.535).

### Felonies Committed While Offender was not Under Sentence for Another Felony

Subject to the above policies, whenever a person is sentenced under a felony that was committed while the person was *not* under sentence for a felony, the sentence runs concurrently with felony sentences previously imposed by any court in this or another state or by a federal court, unless the court pronouncing the subsequent sentence expressly orders that they be served consecutively (RCW 9.94A.589(3)). This rule applies when offenders face multiple charges or have multiple convictions from different jurisdictions.

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<sup>9</sup> Effective for offenses committed after July 23, 1995 (RCW 9.94A.589(1)(c)).



### Probation Revocation

Whenever any person granted probation under RCW 9.95.210 or RCW 9.92.060, or both, has a probationary sentence revoked and a prison sentence imposed, this sentence runs consecutively to any sentence imposed, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently (RCW 9.94A.589(4)). This rule applies when an offender's pre-Sentencing Reform Act case probation is revoked and he or she is also sentenced on a conviction for a crime committed after June 30, 1984, the inception date of the SRA.

### Serving Total Confinement with Consecutive Sentences

In the case of consecutive sentences, all periods of total confinement must be served before any periods of partial confinement, community service, community supervision or any other requirement or condition of a sentence (RCW 9.94A.589(5)). This rule applies to offenders who have not completed their sentence requirements from a previous conviction and are sentenced to total confinement on a new offense.

### **LIMITS ON EARNED RELEASE**

During 2003 session the legislature passed ESSB 5990. That legislation amended RCW 9.94A.728, in part, to increase earned release time for good behavior up to fifty (50) percent of a sentence. The right to earn early release time at the rate of 50 percent will not apply to offenders convicted after July 1, 2010.

The right to earn up to fifty percent of aggregate release time is limited to offenders who are not confined pursuant to a sentence for a sex offense, violent offense, crime against persons, felony domestic violence, residential burglary, drug offense involving methamphetamine or delivery of any controlled substance to a child. This prohibition extends to persons convicted of any offense who have a prior conviction for any of these offenses.

Offenders convicted of a serious violent offense or a sex offense that is a Class A felony committed between July 1, 1990 and July 1, 2003 are prohibited from earning release time in excess of fifteen (15) percent. Offenders committing these offenses on or after July 1, 2003 will not earn release time credit in excess of ten (10) percent.

Offenders sentenced under the Special Sex Offender Sentencing Alternative (see below) are not eligible to accrue any earned release time while serving a suspended sentence.

An offender may not receive any earned release time for that portion of a sentence that results from any deadly weapon enhancements.

### **SENTENCING ALTERNATIVES**

For some types of offenses and offenders, sentencing courts have discretion to order alternative sentences, including: (1) the First-time Offender Waiver (FTOW); (2) the Drug Offender Sentencing Alternative (DOSA); (3) the Special Sex Offender Sentencing Alternative (SSOSA); and (4) Work Ethic Camp (WEC).

## FIRST-TIME OFFENDER WAIVER (FTOW)

There is a statutory alternative to the standard range for certain first-time offenders (RCW 9.94A.650). Offenders are eligible for the First-time Offender Waiver when they:

- Have not been convicted of a violent offense;
- Have not been convicted of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver a Schedule I or II Narcotic Drug, Flunitrazepam classified in Schedule IV or Methamphetamine;
- Have not been convicted of Selling for Profit any Controlled or Counterfeit Substance;
- Have not been convicted of a sex offense;
- Have not previously been convicted of a felony in this state, federal court, another state or foreign country;
- Have never participated in a program of deferred prosecution for a felony offense; and
- Have no juvenile adjudication for any felony offense.

For these offenders, the court is given broad discretion in setting the sentence. Choices available to the court include:

- Imposing up to 90 days of confinement in a facility operated or utilized under contract by the county;
- Requiring that the offender refrain from committing new offenses;
- Requiring up to one year of community supervision which, in addition to crime-related prohibitions<sup>10</sup>, may include requirements that the offender perform any one or more of the following:
  - (a) Devote time to a specific employment or occupation;
  - (b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;
  - (c) Pursue a prescribed, secular course of study or vocational training;
  - (d) Remain within prescribed geographical boundaries and notify the court or a community corrections officer prior to any change in the offender's address or employment;
  - (e) Report as directed to the court and a community corrections officer;
  - (f) Pay all court-ordered financial obligations, and/or perform some community service work.

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<sup>10</sup> RCW 9.94A.030(12) provides: "'Crime-related prohibition' means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct."

If an ongoing treatment program continues after the first year of the offender's community supervision, supervision may continue until the end of treatment. In total, community supervision under the First-time Offender Waiver may not exceed two years.

A court's decision to impose or not to impose the First-time Offender Waiver cannot be appealed by the prosecutor or defendant (RCW 9.94A.585(1)).

## **DRUG OFFENDER SENTENCING ALTERNATIVE (DOSA)**

Effective July 25, 1999, all offenders convicted of a Violation of the Uniform Controlled Substances Act ("VUCSA") are eligible for the Drug Offender Sentencing Alternative (DOSA). Offenders convicted of inchoate VUCSA offenses, attempt, and/or conspiracy, receive sentences of 0 –12 months, and are therefore not eligible. *All other non-violent, non-sex offenders* are eligible, if the court deems that the offender and the community would benefit from the use of the DOSA option.

For eligible offenders, the following conditions must be met:

- Standard sentence for the offense is more than one year (prison sentence);
- No current or prior sex offense;
- No current or prior violent offense;
- No current deadly weapon enhancement (*prior* weapon enhancements are allowed);
- Not subject to a federal INS deportation detainer or deportation order;
- The offense involved a small amount of drugs, as determined by the court; and
- The court determines that the community and the offender would benefit from the imposition of the alternative.

### Chemical Dependency Screening Reports

Prior to sentencing, the court is required to order a chemical dependency screening report, to be completed by the Department of Corrections, for all offenders convicted of a VUCSA offense. The court may explicitly waive that requirement. The court may also, in its discretion, order a chemical dependency screening report for any other eligible, non-violent, non-sex offender who the court finds has a chemical dependency that contributed to the crime. *See* RCW 9.94A.500.

### Crime-Related Prohibitions, Affirmative Conditions, Violations and Sanctions

Should the court elect to impose the DOSA alternative, it must impose a sentence of one-half of the midpoint of the offender's standard range, to be served in a prison facility. The Department of Corrections is required to provide an assessment and appropriate treatment during the period of confinement. The court must also impose the remainder of the midpoint of the standard range as a term of community custody, which must include appropriate outpatient substance abuse treatment,

crime-related prohibitions and a requirement to submit to urinalysis or other testing to monitor compliance. The court is also required to impose at least three additional conditions from a list of allowed conditions of sentence. See RCW 9.94A.660.

Not only may courts impose crime-related prohibitions on offenders sentenced to DOSA, but courts may now also impose affirmative conditions reasonably related to the circumstances of the crime, including rehabilitative treatment programs. See RCW 9.94A.607. Offenders who violate the conditions of DOSA (including those offenders who successfully complete the prison portion of the program and have been placed on community custody for the remainder of their sentence) are subject to graduated sanctions, including termination and reclassification to serve the un-expired term of total confinement in prison.

#### Local Options for Chemically Dependent Offenders

Offenders whose standard range sentence amounts to one year or less are not eligible for DOSA and serve their confinement time in a local jail. However, courts are now permitted to authorize county jails to convert confinement time to a county-supervised community option for those offenders deemed to have a chemical dependency that contributed to the crime. In addition, courts may impose affirmative conditions on such chemically dependent offenders. See RCW 9.94A.680(3).

#### **SPECIAL SEX OFFENDER SENTENCING ALTERNATIVE (SSOSA)**

The Special Sex Offender Sentencing Alternative (SSOSA) is a special sentencing option which allows community treatment of sex offenders. SSOSA provides for a suspended sentence that may include a jail term of up to six months and required outpatient or inpatient treatment (RCW 9.94A.670). Offenders sentenced under this alternative are not eligible to accrue earned release time while serving the suspended sentence. Examinations and treatment under SSOSA may only be conducted by sex offender treatment providers certified by the Department of Health, unless the offender leaves the state for reasons other than for certification, or if there are no certified providers available near the offender's home.

To be eligible for the SSOSA option, offenders must:

- Not be convicted of a serious violent offense with a sexual motivation finding, nor of Rape in the First Degree, nor of Attempted Rape in the First Degree nor of Rape in the Second Degree.
- Be convicted of a violation of RCW 9A.44, Incest (RCW 9A.64.020), Communication with a Minor for Immoral Purposes (RCW 9.68A.090) or an offense with a finding of sexual motivation.
- Have had no prior convictions for sex offenses in this or any other state.
- Have a current offense and criminal history that permits the court to impose a sentence within the standard range of less than 11 years of confinement.

If those criteria are met, the court, on its own motion or on the motion of the state or the defendant, may order an examination to determine if the defendant is amenable to treatment. The examination report must include the following:

- The defendant's version of the facts and the official version of the facts;
- The defendant's offense history;
- An assessment of problems in addition to the alleged deviant behavior;
- The defendant's social and employment situation; and
- Other evaluation measures used.

The examiner must assess the defendant's amenability to treatment and relative risk to the community. A proposed treatment plan must be provided and must include, at a minimum:

- Frequency and type of contact between offender and therapist;
- Specific issues to be addressed in the treatment and description of planned treatment modalities;
- Monitoring plans, including any requirements regarding living conditions, lifestyle requirements and monitoring by family members and others;
- Anticipated length of treatment; and
- Recommended crime-related prohibitions.

Upon the motion of the state or the court, a second examination regarding the offender's amenability to treatment may be ordered. The defendant is to pay the cost of any second examination ordered unless the court finds that the defendant is indigent, in which case the state pays the cost.

Once the examination report is received, the court must determine whether the defendant and the community will benefit from use of this special sentencing alternative. The court must also consider the victim's opinion regarding whether the offender should receive a treatment sentence.

If a court decides to exercise the SSOSA option, it must impose a sentence within the standard sentence range, suspend execution of the sentence and order the defendant to spend up to six months in confinement (not to exceed the standard range of confinement for that offense).

The court is required to order treatment during the suspended sentence for a period up to three years and may order outpatient or inpatient treatment. A community mental health center may not be used for treatment unless it has a special sex offender treatment program. The offender cannot change sex offender treatment providers without first notifying the prosecutor, the community corrections officer and the court. In addition, the offender cannot change treatment providers without court approval if the prosecutor or community corrections officer objects to the change.

#### Community Custody for SSOSA Offenders

As part of the SSOSA sentence, the court is required to place the offender on community custody for the length of the suspended sentence or three years, whichever is greater. The court may impose crime-related prohibitions and requirements that the offender:

- Devote time to a specific employment or occupation;

- Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- Report as directed to the court and to a community corrections officer;
- Pay all court-ordered legal financial obligations, perform some community service work or any combination thereof;
- Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime.

Several options are available should the offender violate these sentence conditions. The court may revoke the suspension and order execution of the sentence or order up to 60 days in confinement. If a violation of conditions occurs during community custody, the Department of Corrections is authorized to return the offender to more restrictive confinement immediately. All confinement time served during the period of community custody is credited to the offender if the suspended sentence is revoked.

During the period of treatment, the sex offender therapist must submit quarterly reports on the offender's treatment progress to the court and to the parties of record. At a minimum, the reports must reference the treatment plan and include the dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment and any other material specified by the court at sentencing.

At the sentencing hearing, the court sets a treatment termination hearing three months prior to the anticipated date of treatment completion. The sex offender therapist and community corrections officer submit written reports to the court and to parties of record prior to this hearing. The reports must address the offender's compliance with treatment and monitoring requirements and must contain recommendations regarding termination from treatment, including proposed community custody conditions.

A second evaluation regarding the advisability of treatment termination may be requested by either party and ordered by the court. The cost must be borne by the offender unless the court finds the person to be indigent, in which case the state pays the cost.

As a result of the hearing, the court may modify the supervision conditions and must either terminate treatment or extend treatment for up to the remaining period of community custody.

### Other Sex Offender Treatment in Prison

Inpatient sex offender treatment programs are available for some other sex offenders. This program is not a sentencing option; offenders are admitted at the discretion of the Department of Corrections rather than by court order. The statutory authorization and procedures vary depending on the date the offender committed the crime. No authority exists for converting confinement time to community supervision for offenders who successfully complete the program.

For an offender who committed a felony sex offense between July 1, 1987 and July 1, 1990, and who received a sentence of more than one year but less than six years of confinement, a court may request the DOC to evaluate the offender's amenability to treatment, and the DOC may place the

offender in a treatment program within a correctional facility. If the offender completes a program before the expiration of the sentence, the DOC may request that the balance of confinement be converted to community supervision (except for offenders convicted of Rape in the First or Second Degree or of the anticipatory offense of Rape in the First Degree). If the offender violates a condition of this community supervision, the court may impose a 60-day penalty or order the balance of community supervision to be served in prison.

Sex offenders who committed crimes prior to July 1, 1987 may request an evaluation by DOC regarding their amenability to treatment. If such amenability is determined, an offender may request placement in a treatment program within the prison, subject to available funding.

#### Community Custody for Sex Offenses Committed on or after June 6, 1996

A court is required to sentence sex offenders who commit sex offenses on or after June 6, 1996, to a term of community custody of three years or the period of earned release, whichever is longer. At any time prior to the completion of the terms of community custody, the court may extend any or all of the conditions of community custody for a period up to the length of the statutory maximum for the offense. If the victim was a minor child, a condition may be imposed prohibiting contact between the sex offender and the minor victim or a child of similar age or circumstance as a previous victim.

#### **WORK ETHIC CAMP (WEC)**

Effective July 25, 1999, offenders are eligible for the Work Ethic Camp if they:

- Are sentenced to between 12.03 months and 36 months of confinement;
- Have no current drug offense (violation of the Uniform Controlled Substance Act, or “VUCSA”), including solicitation to commit a VUCSA offense;
- Have no current or prior violent or sex offense convictions;
- Are not subject to an INS deportation detainer or deportation order; and
- Have not participated in Work Ethic Camp in the past.

The sentencing court must refer eligible offenders to be admitted to Work Ethic Camp. The Department of Corrections is required to place referred offenders in the program, subject to capacity and to the offender's agreement to participate, unless physical or mental impairments are judged to preclude participation. The length of the program is between 120 and 180 days, including a two-week period of transition training. Upon completion of the program, offenders are released to complete the remaining sentence on community custody. Participants who fail to complete the program are required to serve the un-expired term of their sentence. *See* RCW 9.94A.690.

## **SUPERVISION IN THE COMMUNITY**

### **COMMUNITY CUSTODY FOR SENTENCES ONE YEAR OR LESS**

For sentences of one year or less (jail sentences), and for a First-time Offender Waiver, a court may impose up to one year of community custody. Community custody is limited to 24 months for consecutive sentences (RCW 9.94A.589(5)). Community custody must be imposed on the date of sentencing. This period of custody is tolled while the offender is in total or partial confinement.

Community custody under the First-time Offender Waiver may include rehabilitative conditions, which may include crime-related prohibitions.<sup>11</sup> All community custody for crimes committed on or after July 28, 1991, include a requirement that offenders cannot own, use or possess firearms or ammunition (RCW 9.94A.720).

If a court finds that an offender has a chemical dependency that has contributed to his or her offense, the court may prohibit such use during community custody, with regular monitoring by urinalysis or Breathalyzer tests. The court may also impose affirmative conditions reasonably related to the circumstances of the crime, such as participation in drug and alcohol treatment, depending on available resources.

A court may, as part of community custody, also order an offender to undergo a mental status evaluation and participate in available outpatient mental health treatment.

A court is permitted to require an offender to participate in a domestic violence perpetrator program if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child.

### **COMMUNITY CUSTODY**

The Offender Accountability Act became effective July 1, 2000, and requires sentencing to include a term of community custody for all offenses enumerated in the Act. The Act is aimed at strengthening the law to hold offenders more accountable in the community and further requires the Department of Corrections to supervise offenders based upon their risk to the community's safety.

For offenses committed on or after July 1, 2000, "community custody" will be the only form of supervision required for all sex offenses, all serious violent offenses, all violent offenses, all "crimes against persons" (defined in RCW 9.94A.411) and all felony drug offenses. Conditions of community custody and levels of supervision will be based on risk.

Courts sentence all offenders, except those sentenced under RCW 9.94A.712, to a determinate period of confinement and to community custody for the period set forth in the community custody range or for the period of earned release time, whichever is longer. Courts may impose conditions of supervision,

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<sup>11</sup> RCW 9.94A.030(12) provides: "'Crime-related prohibition' means an order of a court prohibiting conduct that directly relates to the circumstance of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct."



including affirmative conditions such as rehabilitative treatment, which are reasonably related to the circumstances of the offense, to the risk of recidivism and to community safety. Offenders may not be discharged from community custody before the end of the period of earned release, the Department of Corrections, however, may discharge an offender at any time during the period between the end of the earned release and the end of the range specified by the court.

When sentencing sex offenders who commit offenses on or after September 1, 2001, and who fall within the scope of RCW 9.94A.712, the court is required to impose a sentence to a maximum term of confinement, the statutory maximum for the offense, and a minimum term within the standard range for the offense or exceptional outside the standard sentence range as allowed under RCW 9.94A.535. In addition to other terms of the sentence, the court must also sentence the offender to community custody under the supervision of the Department of Corrections and the authority of the Indeterminate Sentence Review Board for any period of time remaining between the date of release from total confinement and before the expiration of the statutory maximum sentence.

The Sentencing Guidelines Commission established community custody ranges for eligible offenses through the administrative process. The community custody ranges became effective July 1, 2000. The Commission is empowered to modify the ranges annually but subsequent modifications will require enactment by the Legislature before becoming effective. The ranges are as follows:

**Figure 3. Community Custody Ranges, Chapter 437-20 WAC**

<b>Offense Type</b>	<b>Community Custody Range</b>
Sex Offenses (Not sentenced under RCW 9.94A.670)	36 to 48 months
Serious Violent Offenses	24 to 48 months
Violent Offenses	18 to 36 months
Crimes Against Persons (As defined in RCW 9.94A.411(2))	9 to 18 months
Offenses under chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.660)	9 to 12 months

The ranges specified in this section are not intended to affect or limit the authority to impose exceptional community custody ranges, either above or below the standard community custody range as authorized by RCW 9.94A.535 and pursuant to such guidelines. The community custody range for offenders with multiple convictions must be based on the offense that dictates the longest term of community custody. The community custody range for offenders convicted of an offense that falls into more than one of the five categories of offense types listed in this section must be based on the offense type that dictates the longest term of community custody.

[Statutory Authority: RCW 9.94A.850(6) (rule-making authority under chapter 34.05 RCW). 00-11-052, § 437-20-010, filed 5/12/00, effective 7/1/00.]

While on community custody, offenders will be subject to affirmative conditions imposed by the court and by the Department of Corrections. The Department will supervise offenders according to identified risk. Violations of conditions of community custody will be sanctioned by the Department

under a system of graduated sanctions, including confinement. An appeals process for violations and sanctions has been established by the Department.

Effective July 1, 2000, the one-year term of community supervision for unranked felonies becomes a term of community custody. Effective July 25, 1999, offenders sentenced under the First-time Offender Waiver are required to be supervised in the community for one year, unless an ongoing treatment program continues beyond the first year, after which supervision ends with treatment. Such supervision cannot exceed two years.

## **ALTERNATIVES TO CONFINEMENT**

### **ALTERNATIVE CONVERSIONS**

The sentencing grid ranges are expressed in terms of total confinement (RCW 9.94A.530). For certain offenders, a court may convert terms of total confinement to partial confinement or to community service. This provision allows courts to take advantage of available alternatives to confinement in cases where it is deemed appropriate. *If the court does not use an alternative conversion for a nonviolent offense with a sentence range of one year or less, the reason why must be stated on the Judgment and Sentence form (RCW 9.94A.680).*

The 1999 Legislature modified the requirements for non-violent and non-sex offenders sentenced to one year or less. Where a court finds that a chemical dependency contributed to the crime, the court may authorize the county jail to convert jail confinement to an available county-supervised community option. The court may require the offender to perform affirmative conditions, such as rehabilitative treatment, which are reasonably related to the circumstances of the crime and are reasonably necessary or beneficial to the offender and to the community.

For all offenders with sentences of one year or less, one day of total confinement may be converted to one day of partial confinement. Non-violent offenders with sentences of one year or less are also eligible for conversion of total confinement to community service (one day of confinement equals eight hours of service). This community service conversion, however, is limited to 30 days or 240 hours. If a community service conversion is ordered, and the determinate sentence is greater than 30 days, the balance of the term is to be served in total or partial confinement.

Partial confinement sentences may allow the offender to serve the sentence in work release, home detention, work crew or a combination of work crew and home detention. If the offender violates the rules of the work release facility, work crew or home detention program, or fails to remain employed or enrolled in school, the facility director may transfer the offender to the county detention facility. The offender may then request an administrative hearing. Pending the hearing, or in the absence of a request for such a hearing, the offender shall serve the remainder of the term of confinement in total confinement (RCW 9.94A.731).

## WORK CREW

Work crew is a partial confinement option created by the 1991 Legislature. Offenders who qualify must have committed the offense on or after July 28, 1991. The offense may not be a sex offense.<sup>12</sup> For offenses committed before July 25, 1993, the offender must be sentenced to a facility operated or utilized under contract by a county (*i.e.*, the sentence must be one year or less in length); this restriction does not apply to offenses committed after that date. If the sentence is 9 months or more, at least 30 days of total confinement must be served before the offender becomes eligible for work crew. Work crew may be simultaneously imposed with electronic home detention. Work crew hours served may include work on civic improvement tasks, substance abuse counseling, job skills training or a maximum of 24 hours per week at approved, verified work.

To be eligible to receive credit for approved, verified work, offenders must first successfully complete 4 weeks of work crew, each week comprised of 35 hours of service. Work crew projects specified by the work crew supervisor must be completed in coordination with approved, verified work. Unless exempted by the court, offenders using approved, verified employment as part of their work crew hours must pay a monthly supervision assessment.

## HOME DETENTION

Home detention is a partial confinement option in which an offender is confined to a private residence and subject to electronic surveillance. The option was created by the 1988 Legislature and is available for offenders convicted of crimes committed on or after June 9, 1988. Because partial confinement programs are limited to sentences of one year or less, home detention is not an option for offenders with prison sentences.

Convictions for any of the following offenses make the offender ineligible for home detention: a violent offense, a sex offense, a drug offense, First or Second Degree Reckless Burning, Third Degree Assault, Third Degree Assault of a Child, Unlawful Imprisonment or Harassment.

Eligibility for home detention is conditioned upon (a) employment or school attendance, (b) program rules adherence, and (c) compliance with court-ordered legal financial obligations (RCW 9.94A.731(2)).

Home detention may be imposed for offenders convicted of Possession of a Controlled Substance (RCW 69.50.401(d)) or of Forged Prescription for a Controlled Substance (RCW 69.50.403), providing the offender is monitored for drug use.

Offenders convicted of Second Degree Burglary or Residential Burglary must meet the following eligibility conditions for home detention: (a) successful completion of a twenty-one day work release program; (b) no convictions for Second Degree Burglary or Residential Burglary during the preceding two years and not more than two prior convictions for burglary; (c) no convictions for a

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<sup>12</sup> RCW 9.94A.030(38) provides: "'Sex offense' means: (a) A felony that is a violation of chapter 9A.44 RCW, other than RCW 9A.44.130(10), or RCW 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes; (b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection; (c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; (d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection."

violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense; (d) no prior charges of escape; and (e) fulfillment of the other conditions of the home detention program.

Home detention may also be ordered for offenders whose medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered legal financial obligations.

## RESTITUTION

A court must order restitution whenever a felony results in injury to a person or damage or property loss. If restitution is not ordered, the court must indicate the extraordinary reasons on the record (RCW 9.94A.505(7)).

Restitution may also be ordered to pay for an injury, loss or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that he or she pay restitution for any offenses not prosecuted pursuant to a plea agreement.

Restitution is based on three factors:

- Easily ascertainable damages for injury to or loss of property;
- Actual expenses incurred in treatment for injury to persons; and
- Lost wages resulting from injury.

Restitution for the crimes of Rape of a Child in the First, Second or Third Degree, in which the victim becomes pregnant, must include:

- Victim's medical expenses associated with the rape; and
- Support for any child born as a result of the rape, if child support is ordered.

Restitution may *not* include reimbursement for damages for mental anguish, pain and suffering and other intangible losses, but may include reimbursement for counseling reasonably related to the offense. The amount of restitution may not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime. (See RCW 9.94A.753(1)).

Restitution is to be determined at the sentencing hearing or within 180 days. As part of the sentence, the court must set the terms and conditions under which the defendant makes restitution. It is required that the court be specific about the payment schedule for restitution, so that these sentence conditions may be appropriately monitored by the community corrections officer. The court may not reduce the total amount of restitution ordered because of the offender's lack of ability to pay the total amount.

For offenses committed prior to July 1, 2000, an offender's compliance with the restitution requirement may be supervised for ten years after the date of sentence or release from confinement. The restitution portion of a sentence may be modified as to amount, terms and conditions during this period regardless of the community supervision term and the statutory maximum of the crime. A court may extend the restitution requirement for a second ten-year period.

For offenses committed on or after July 1, 2000, RCW 9.94A.760(4) reads: *“For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department of corrections shall supervise the offender's compliance with payment of the legal financial obligations for ten years following the entry of the judgment and sentence or ten years following the offender's release from total confinement, whichever period ends later. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction.”*

Restitution for victims is the first priority for payment by an offender.

## **CASES INVOLVING FRAUD OR DECEPTIVE PRACTICE**

If an offender or organization is found guilty of an offense involving fraud or other deceptive practice, a court may require that notice be given to the class of persons or sector of the public affected by the conviction or financially interested in the subject matter of the offense. The notice may be accomplished by mail, by advertising through designated media, or by other appropriate means (RCW 9.94A.753(5), RCW 9.94A.750(4)).

## **FINES**

The court may impose fines as part of all sentences for felony offenses according to the following ranges (RCW 9.94A.550):

Class A felonies	\$0 - \$50,000
Class B felonies	\$0 - \$20,000
Class C felonies	\$0 - \$10,000

Unless the court finds the offender to be indigent, every person convicted of certain VUCSA violations (RCW 69.50.401, 69.50.402, 69.50.403, 69.50.406, 69.50.407, 69.50.410, 69.50.415) shall be fined \$1,000 in addition to any other fine or penalty imposed. This fine increases to \$2,000 if the violation is a second or subsequent violation of one of the laws specified.

When a fine is imposed for Manufacture, Delivery or Possession with Intent to Manufacture or Deliver Methamphetamine, or for Possession of Ephedrine or Pseudo Ephedrine with Intent to Manufacture Methamphetamine, the first \$3,000 may not be suspended and must be provided to the law enforcement entity responsible for cleaning up the methamphetamine lab site.

## OTHER LEGAL FINANCIAL OBLIGATIONS

The Sentencing Reform Act allows a court to impose several additional monetary obligations. These include:

- Court costs, including reimbursement for extradition costs (RCW 9.94A.030(27));
- Defense attorney's fees and defense costs (RCW 9.94A.030(27));
- Contributions to a county or local drug fund (RCW 9.94A.030(27));
- Crime victims' compensation assessment (RCW 7.68.035);
- Recoupments to the victim for the cost of counseling as a result of the offender's crime, in cases where the Special Sex Offender Sentencing Alternative is exercised (RCW 9.94A.670(4)(b));
- Payment for the cost of incarceration, at the rate of \$50 per day; and/or
- Payment of up to \$1,000 in costs incurred by public agencies in an emergency response to the incident that resulted in conviction for Vehicular Assault or Vehicular Homicide by being under the Influence of Intoxicating Liquor or Any Drug.

All such monetary obligations, except probationer assessments, are monitored by the Department of Corrections (DOC) for up to ten years after the last date of release from confinement or the date the sentence was entered (RCW 9.94A.505(4)). The court may extend its jurisdiction an additional ten years.

A court must designate the total amount of a legal financial obligation, distinguishing a separate assessment for restitution, costs, fines and other assessments. This designation must appear on the Judgment and Sentence form or on a subsequent order to pay, and must include the required schedule for monthly payment. If the court fails to set the monthly payment amount, the DOC sets the amount.

In order to assist the court in setting the monthly payment sum, the offender must truthfully report to the DOC regarding earnings, property and assets, and must supply requested documentation.

The DOC may recommend to the court modifications in the payment schedule if the offender's financial circumstances change during the period of supervision. In cases where the DOC sets the monthly assessment amount, the DOC may modify the monthly assessment without consulting the court.

Civil action for collection of unpaid legal financial obligations may be initiated by the DOC or by any obligee. Such collection is effected through a wage assignment process. (*See RCW 9.94A.760(3) and 9.94A.7701.*)

## CONTACT WITH INDIVIDUALS

A court may prohibit an offender from contacting with specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the community supervision or community placement term. The order prohibiting contact must relate directly to the circumstances of the crime of conviction (RCW 9.94A.505(8)).

## **REVIEW OF SENTENCES**

Sentences within the standard range cannot be appealed (RCW 9.94A.585). Sentences outside the standard range may be appealed by the defendant or by the prosecutor. Before reversing a sentence that is outside the sentence range, the Court of Appeals must find that:

- The reasons supplied by the sentencing judge were not supported by the record, or they do not justify a sentence outside the range; or
- The sentence imposed was clearly excessive or clearly too lenient.

The Department of Corrections may request a review of a sentence committing an offender to the custody or jurisdiction of the department. This review must be limited to errors of law and must be filed with the Court of Appeals no later than 90 days after the Department has actual knowledge of the term of the sentence. The Department must certify that all reasonable efforts to resolve the dispute at the Superior Court level have been exhausted.

## **PENALTY AND MODIFICATION HEARING**

If an offender violates any sentence condition or requirement, the court may modify its judgment and sentence according to the rules in RCW 9.94A.634. The court, upon motion of the state or upon its own motion, must first require the offender to show cause why he or she shall not be punished for the non-compliance. A summons or arrest warrant may be issued by the court for the offender's appearance.

If a court finds that a violation of sentence conditions or requirements has occurred, it may order the offender confined for a period not to exceed 60 days for each violation. The court may: (1) convert a partial confinement term to total confinement; (2) convert community service to total or partial confinement; or (3) convert monetary obligations (except restitution and the crime victim penalty assessment) to community service hours by calculating the obligation into hours using the state minimum wage as a calculation basis.

Any time served in confinement awaiting the hearing must be credited against any confinement order. If a court finds that a violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and community service obligations. In all cases, escape charges may also be filed if appropriate.

## **DISCHARGE AND VACATION OF CONVICTION RECORD**

### **DISCHARGE**

When an offender completes his or her sentence requirements, the Department of Corrections must notify the sentencing court in accordance with RCW 9.94A.637. The court then discharges the offender and provides him or her with a certificate of discharge. This certificate restores all civil rights lost upon conviction. It is not, however, based on a finding of rehabilitation.

Following discharge, the offender's prior record may be used to determine the sentence for any later convictions and may also be used in later criminal prosecution as an element of an offense or for impeachment purposes.

### **VACATION OF CONVICTION RECORD**

Every offender discharged under the above provision may apply to the sentencing court for a vacation of the conviction record as provided in RCW 9.94A.640. The offender's record cannot be cleared if:

- Any criminal charges are pending against the offender in any court in this state, another state or federal court;
- The offense was a violent offense (as defined in RCW 9.94A.030(45));
- The offense was a crime against persons (as defined in RCW 43.43.830);
- The offender has been convicted of a new crime in this state, another state or federal court since the date of the offender's discharge;
- The offense was a Class B felony, and less than ten years have passed since the date the applicant was discharged; or
- The offense was a Class C felony, and less than five years have passed since the date the applicant was discharged.

If the offender meets these tests, the court may clear the record of conviction by:

- Permitting the offender to withdraw his/her guilty plea and to enter a plea of not guilty; or
- Setting aside the guilty verdict, if the offender was convicted after a plea of not guilty; and
- Dismissing the information or indictment against the offender.

Once the court vacates a record of conviction, the offender's conviction may not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender must be released from all penalties and disabilities resulting from the offenses. For all purposes, including responding to questions on employment applications, an offender whose record of conviction has been vacated may state that he or she has never been convicted of that crime.



However, a vacated conviction record may be used as an element of a crime in a later criminal prosecution for a limited number of offenses whose classification as a felony requires proof of a prior conviction (*e.g.*, Communication with a Minor for Immoral Purposes).

The sentencing guidelines allow automatic "wash-out" of prior convictions that meet the requirements of vacation of conviction. This policy allows offenders who do not formally apply to the court to have eligible offenses excluded from their criminal history in subsequent convictions. (See page I-10 for further discussion of this policy.)